

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9887 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KETAN A PANDYA

Versus

SETTLEMENT COMMISSIONER AND LAND RECORD DIRECTOR

Appearance:

MR KIRAN YAJNIK for Petitioners

MR VB GHARANIA, AGP for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/08/1999

ORAL JUDGEMENT

#. The petitioners praying for the direction to the respondent authorities to consider their representation. Second prayer has been made for direction to the respondent authorities to issue appointment orders as surveyors to the petitioners as was done in the case of other candidates as per Annexure-D. The last prayer is made to grant any other appropriate and suitable relief as may be deemed just and proper in the facts and

circumstances of the case.

#. The facts of the case are that the respondent No.1 invited applications for making the appointment by selection on 218 posts of surveyors. In response to that advertisement the petitioners submitted their applications. They were interviewed by the selection committee in the month of March/April, 1992. As a result of this interviews a select list of 218 candidates and a waiting list of 25 candidates was prepared on 22/12/92. It is the case of the petitioners that their names are there at Sr. No. 1 & 3 respectively in waiting list. The respondent No.1 has given the appointment orders to 218 candidates from the select list but 206 candidates have reported for duty and 12 vacancies were remained to be filled in. It is the grievance of the petitioners that as their names stand at Sr. No.1 & 3 in the waiting list and 12 posts were available they should have been given the appointment as surveyors but it has not been done. They filed representations from time to time to the respondents but when nothing has been done, they have no option but to approach this court. Hence this petition under Article 226 of the Constitution of India.

#. Reply to this special civil application is filed by the respondents. In the reply the respondents have not disputed the facts viz. (i) The advertisement has been made for making of the appointment by selection on 218 posts of Surveyors; (ii) A select list of 218 candidates and waiting list of 25 candidates have been prepared in which the names of the petitioners are placed at Sr. 1 & 3 in later list and (iii) The appointment letters were given to all the 218 candidates out of them 206 candidates only have joined.

#. The claim of the petitioners for appointment on the posts of surveyors has been contested on the grounds (i) Result of six candidates were kept undeclared. Out of six candidates whose results were not declared, 5 candidates were selected and their results were declared. On 8/4/96 the result of one more candidate was also declared. From this fact it is clear that against 12 vacancies 5 candidates were given appointment.

#. Even it is taken that the matter has to be decided in favour of the six candidates and they have to be given the appointments, still vacancies remain which can be filled in from the waiting list.

#. Further defence has been given that as per the Finance Department Resolution No.KH.R.KH./1091/1337/441

dated 28/1/91 there was possibility of reduction in the vacancies and it was uncertain how many posts will be reduced as per the resolution and as per the said decision of the Revenue Department dated 26/5/95 and during this period the validity of the waiting list was expired being more than one year. Summing up of the contention it is stated that vacant posts were not filled in for the reasons (i) decision about undeclared results of 6 candidates was to be taken and (ii) due to Government policy of economy in expenditure and 10% reduction. Then comes another averment made that there are 1060 sanctioned posts of surveyors and under the economy 106 posts were required to be abolished. The counsel for the respondent has given out that out of 218 posts 106 posts are to be abolished. From this reply what I find that the respondents have not fairly come up before this court. This reply is nothing but a reply based on contradictory pleas. In fact they have failed to give out any justification for their action. The defence appears to have been raised for the sake of defence. But in substance there is no defence.

#. In case as a result of economic cut 106 posts are to be reduced, I fail to see what for the 218 posts were advertised. Economic cut has to be made if we go by the facts of this case, in pursuance of the Government Resolution dated 28/10/91 whereas the select list has been prepared in December, 1992 i.e. much after 28/10/91. Even if the advertisement was after that date, it is within the competence of the respondent to reduce the posts and restrict the appointments to be made on $218 - 106 = 112$ posts only. But it has not been done. It is not in dispute that the appointment orders were given to all 218 candidates. If we go by these facts this story of economic cut has no relevance to deny the appointments. This defence is wholly illusory, arbitrary and perverse. In fact, it is a manufactured defence which has no base whatsoever.

#. The 12 vacancies were there. The justification that six candidates' result was undeclared, hence the appointments were not made is wholly perverse. Even if it is taken to be correct still six vacancies are to be filled in by the respondents. This is wholly a manufactured and concocted defence. It has no relevance whatsoever to the case with which the petitioner has come up before this court. Six results were undeclared but for the reasons best known to the respondents 218 appointments have been made. In these facts at the most only 212 appointments could have been made. The very fact that 218 appointments were made this story of six

undeclared result with this defence the respondents have come in this case is deliberately manufactured defence.

#. Otherwise also even after adjusting six persons six posts would have remained and against those posts no other claimant was there except the candidates, who are there in the waiting list. Another defence taken that by lapse of time the waiting list stands lapsed is also equally a manufactured defence. The respondent No.1 is an officer of the welfare State and it is excepted from him to act fairly and reasonably. A misconception of law is there in the minds of the officers of the State that when some of the employees/officers approach this court they have to defend their claim even if it is not defensible. Not only this misconception is prevailing in their mind but it became a practice mechanical and blindly they are following it and each and every petition of employer/officer who approaches to this court has to be opposed. This approach and misconception of law, which is prevailing amongst officers of the state deserves to be deprecated. The officers being the officers of the welfare state have to come up and to show and exhibit the state as to be a model employer. Where the claim of the officer/employee is just, reasonable, equitable and deserves acceptance there may not be any hesitation in the minds of the officers to correct their own illegal or erroneous actions at their own or where they are not doing so then boldly come before this court and candidly accept the request of the employee/officer. If we go by the substance of the matter and the reply of the respondents, it is clear that the respondents have no defence. This case of the petitioner is totally undefensible.

##. This cancellation of the waiting list is made on 14/3/96. Much prior to this date 12 vacancies were there. The respondents have not acted upon it and allowed it to lapse. The respondents cannot be allowed to take the benefits of their own wrongs. Moreover this waiting list was, as per their own case, remained in currency till 14/3/96.

##. Taking into consideration the totality of the facts of the case if the defence of the respondents is accepted as a whole still they have no defensible case. The claim of the petitioner deserves to be accepted as six clear vacant posts were available as economic cut was not given effect to but only as a defence has been cited.

##. In the result, this special civil application

succeeds and the same is allowed. The respondents are directed to consider the case of the petitioners to give then the appointments on the posts of surveyor and their appointments shall relate back to the date of availability of the posts. However, for this period they shall not be entitled to any monetary benefits. This period shall be counted for all other service benefits.

##. It is a case where unemployed persons, who have been selected for the post in open selection, they were entitled for the appointment as the posts were available, still the respondents acted deliberately in a fashion and manner not to give the appointments and they were constrained to approach the Court. The litigation before this court heavily costs and it is heavily costed to the petitioners as they have to pay Rs.11,000/- as professional fees to Dr. Kiran Yagnik for providing his professional services to them in this petition. In addition to this other amount is also have been incurred by them, the details of which are not been given. However, the learned counsel for the petitioner submits that the petitioners paid an amount of Rs.11,000/- to him. This is a fit case where the respondent No.1 is to be saddled with the costs of this petition in favour of the petitioners. The respondent No.1 is directed to pay Rs.11,000/- as costs of the litigation to the petitioners. This amount has to be paid to the petitioner in equal proportion. The compliance of this order has to be reported to this court. Rule is made absolute accordingly.

(S.K.Keshote, J.)

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